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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16
17 MAYRA QUINTANA, ELIZABETH
18 SANCHEZ, individually, and on behalf of
19 other members of the general public
20 similarly situated, and as aggrieved
employees,

21 Plaintiffs,

22 vs.

23 CLAIRE'S BOUTIQUES, INC., a
24 Colorado corporation, and DOES 1 through
50, inclusive,

25 Defendants.

Case No. CV 13-00368 PSG

**DEFENDANT CLAIRE'S BOUTIQUES,
INC.'S OPPOSITION TO PLAINTIFFS'
MOTION TO COMPEL FURTHER
RESPONSES TO INTERROGATORIES, SET
ONE, NO. 1 AND REQUESTS FOR
PRODUCTION OF DOCUMENTS, SET ONE,
NOS. 10, 12, 14, 16, AND 17**

Date: December 17, 2013
Time: 10:00 a.m.
Dept.: Courtroom 5
Judge: Honorable Paul S. Grewal

Complaint Filed: December 21, 2012

1

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1 **I. INTRODUCTION**

2 Plaintiffs Mayra Quintana (“Quintana”) and Elizabeth Sanchez (“Sanchez”) (collectively
 3 “Plaintiffs”) seek to compel the production of the names, addresses, telephone numbers, time
 4 entry records, and payroll records for almost 1,100 current and former Store Manager and
 5 Assistant Store Manager employees who worked throughout California for Defendant Claire’s
 6 Boutiques, Inc. (“Defendant” or “Claire’s”).

7 The Court should deny Plaintiffs’ Motion to Compel the disclosure and production of such
 8 personal, private and confidential information for each and every individual within the alleged
 9 putative class, because: (1) Plaintiffs have not established the requisite *prima facie* showing that
 10 a class action is maintainable in this case; (2) Plaintiffs have not established that discovery of
 11 either the putative class members’ contact information or their payroll records and time records is
 12 relevant or reasonably calculated to lead to the discovery of relevant evidence that would
 13 substantiate the type of common proof required to support class certification; (3) the sought-after
 14 information is protected by the putative class members’ right to privacy as guaranteed by Article
 15 I, Section 1 of the California Constitution, and Plaintiffs have failed to demonstrate any
 16 compelling need that would outweigh such privacy interests; and (4) the requested discovery is
 17 unduly burdensome and impermissibly overbroad.

18 The Ninth Circuit has made clear that pre-certification discovery on a class-wide basis is
 19 not permissible *unless* the plaintiff can first demonstrate that a class action is maintainable or that
 20 the discovery is necessary to substantiate class allegations. *Mantolete v. Bolger*, 767 F.2d 1416,
 21 1424 (9th Cir. 1985) (“Although in some cases a district court should allow discovery to aid the
 22 determination of whether a class action is maintainable, the plaintiff bears the burden of
 23 advancing a *prima facie* showing that the class action requirements of Fed.R.Civ.P. 23 are
 24 satisfied or that discovery is likely to produce substantiation of the class allegations.”). Here,
 25 Plaintiffs have made no such showing. Plaintiffs are merely 2 out of approximately 1,087
 26 putative class members. Claire’s has operated approximately 207 retail stores throughout
 27 California during the relevant time period, yet Quintana worked in only one store as an Assistant
 28 Store Manager for approximately 19 months, and Sanchez worked in only two stores as a Store

1 Manager for a total of approximately 17 months.

2 Plaintiffs have not alleged the existence of any uniformly applicable unlawful common
 3 policy that would bind all of the disparate individual putative class members together. On the
 4 contrary, Plaintiffs essentially argue that they need the time records and payroll records of each
 5 putative class member to make individualized inquiries regarding whether unlawful conduct
 6 occurred – an argument that directly contradicts any possible showing that this case is amenable
 7 to class treatment, and instead indicates that this case cannot meet the requirement for class
 8 certification set forth by the United States Supreme Court in *Wal-Mart Stores, Inc. v. Dukes*, 131
 9 S. Ct. 2541, 2551 (2011) (i.e., that common issues are capable of adjudication on a class-wide
 10 basis through use of common proof). Plaintiffs' professed need for individualized discovery with
 11 respect to each putative class member is anathema to the very purpose of the class action process,
 12 which seeks to avoid the separate adjudication of many individual claims in favor of common
 13 evidence. As the Supreme Court made clear in *Dukes*, it is the existence and applicability of a
 14 *common policy* that matters for class certification.

15 Here, however, Plaintiffs have failed to show that the sought-after contact information and
 16 time records and payroll records are necessary to substantiate the argument that common
 17 questions of law and fact predominate. Other than a vague and entirely unsupported assertion
 18 that the time and payroll records are supposedly “essential,” Plaintiffs fail to articulate why these
 19 documents are relevant to establish Plaintiffs’ class claims. Indeed, Plaintiffs’ Motion does not
 20 even describe the theory (or theories) under which they intend to use time and payroll records to
 21 prove that almost 1,100 putative class members “were not paid for all hours worked because all
 22 hours worked were not recorded,” “were entitled to receive certain wages for overtime
 23 compensation but were not,” “were not receiving at least minimum wages for work done off-the-
 24 clock”, “did not receive all meal periods,” “did not receive all rest periods,” and “incurred
 25 necessary business-related expenses and costs that were not fully reimbursed,” as alleged in their
 26 Complaint. *See* Complaint, ¶¶ 31-35, 78. Plaintiffs merely make the conclusory assertion
 27 (which is insufficient under the *Mantolete* authority) that the time and payroll records will
 28 somehow “establish that certain of Defendant’s practices were implemented on a company-wide

1 basis, in connection with but [sic] possibly not following overtime policy, wage statement policy,
 2 meal break policy, rest break policy, and separation payment policy" (Motion at 17:1-3).

3 It is important for the Court to consider Plaintiffs' Motion within the context of the
 4 discovery that has already occurred. Claire's has already produced a vast amount of information
 5 in both its interrogatory responses and its 641-page document production and has verified the
 6 categories of documents that do not exist or cannot be located. The individual Plaintiffs have
 7 received the entire contents of their personnel files, their individual time and payroll records,
 8 non-privileged documents reflecting any complaints they made regarding any paycheck errors or
 9 expense reimbursement requests, all applicable policy and procedure documents in effect during
 10 the relevant time period relating to time recording, overtime, meal periods and rest breaks, and
 11 expense reimbursement, and all job descriptions for the District Manager, Store Manager, and
 12 Assistant Store Manager positions. One would expect, given the significant amount of
 13 information Plaintiffs already possess, that they would have explained in their Motion
 14 specifically why, for example, they also need the time and payroll records for more than 1,000
 15 other current and former employees in order to prove a "common policy", given that these other
 16 employees' time and payroll records contain the same fields of data as those of the Plaintiffs.

17 The class contact information and time and payroll records are also clearly private,
 18 confidential and protected by Article I, Section 1 of the California Constitution. Putative class
 19 members never contemplated that by seeking employment with Claire's their home addresses
 20 and telephone numbers would be freely shared with a third-party plaintiff's attorney, who
 21 (Claire's anticipates) will retain a call center to telephone them at their homes. Similarly,
 22 disclosure of the requested documents would unnecessarily trample the privacy rights of these
 23 non-parties, because putative class members' payroll records (i.e., their wage statement or "pay
 24 stub" data) contain information regarding their financial compensation, health insurance/benefit
 25 deductions, social security numbers, 401(k) information, wage garnishments, and other private
 26 information. No compelling need for such information has been shown. For all of the above
 27 reasons, Plaintiffs' Motion should be denied in its entirety.

28 If the Court does not deny Plaintiffs' Motion entirely, then at most, Plaintiffs should

1 receive only a random sampling of the putative class member names and addresses and a
 2 sampling of anonymous time records (but *not* payroll records) with personal identifying
 3 information redacted and containing only unique identifiers. Indeed, during the meet and confer
 4 process Defendant attempted to eliminate the need for Court intervention by proposing a 20%
 5 random sample of the putative class members' names and contact information and time records.
 6 Even though this proposal would have given Plaintiffs access to information for more than 217
 7 putative class members, Plaintiffs rejected the concept of sampling and refused Defendant's
 8 reasonable offer. Thus, if the Court orders the disclosure of *any* contact information, in order to
 9 protect the putative class members' constitutional right to privacy, the Court should (1) limit the
 10 disclosure to names and addresses – not telephone numbers, which would allow too great an
 11 intrusion on class members' personal lives, and (2) allow the disclosure to occur only through the
 12 use of an opt-out *Belaire* notice procedure. Similarly, if the Court orders the disclosure of any
 13 *non-anonymous* sampling of time records, the production of such data should be subject to the
 14 same opt-out notice process, as the time entry information is equally (if not more) private and
 15 confidential than putative class member names and addresses.

16 **II. FACTUAL BACKGROUND**

17 Plaintiffs filed this lawsuit on December 21, 2012, alleging claims for violation of the
 18 California Labor Code, including claims for alleged unpaid overtime, unpaid minimum wages for
 19 work performed off-the-clock, unpaid premium pay for missed meal and rest breaks, failure to
 20 timely pay wages upon termination, failure to reimburse business expenses, violation of Labor
 21 Code §§ 2698, *et seq.* (the Private Attorneys General Act of 2004 or the "PAGA"), and violation
 22 of California Business and Professions Code sections 17200, *et seq.* *See* Complaint.¹

23 On March 5, 2013, Plaintiffs served on Defendants Claire's Stores, Inc. and CBI
 24 Distributing Corporation (then parties to the instant action), Interrogatories, Set One, No. 1,
 25 which sought the names, home addresses, telephone numbers, and employee identification
 26 numbers of all of the putative class members. Meckley Decl., ¶ 2; Witte Decl., Exh. A. On April
 27

28 ¹ Plaintiffs also named as defendants Claire's Stores, Inc., CBI Distributing Corporation, and
 Shelley Muzsek, but on May 3, 2013 stipulated to dismiss them from the action. *See* Dkt No. 38.

1 4, 2013, Defendants Claire's Store, Inc. and CBI Distributing Corporation served their responses,
 2 objecting on several grounds to this Interrogatory. Meckley Decl., ¶ 3; Witte Decl., Exh. D.
 3 Defendant Claire's Boutiques, Inc. was never served with Interrogatories, Set One, but following
 4 meet and confer communications with counsel for Plaintiffs, later served its responses on October
 5 25, 2013. Meckley Decl., ¶ 3; Witte Decl., Exh. E.

6 On March 5, 2013, Plaintiffs served Requests for Production of Documents, Set One,
 7 which sought, among other things, the time records and payroll records of each and every putative
 8 class member. Meckley Decl., ¶ 4; Witte Decl., Exh. B. On April 4, 2013, Defendants served its
 9 responses, objecting on several grounds to the Requests. Meckley Decl., ¶ 5; Witte Decl., Exh. C.

10 On August 30, 2013, during a telephonic meet and confer conference, Plaintiffs proposed
 11 that Defendant produce a 25% random sampling of the names and contact information of the
 12 putative class subject to *Belaire-West* opt out notice, provided that Defendant "did not attack the
 13 representativeness of the sample at class certification." Meckley Decl., ¶ 6. Defendant requested
 14 that Plaintiffs put their proposal in writing to specify the agreement regarding
 15 "representativeness" that Plaintiffs were seeking from Defendant. *Id.* at ¶ 6. On September 9,
 16 2013, Defendant again requested that Plaintiffs provide a written description of their proposal
 17 regarding the sampling of the contact information. *Id.* at ¶ 7; Exh. A. Plaintiffs never responded.
 18 *Id.*

19 On September 24, 2013, Plaintiffs withdrew their prior proposal regarding the 25%
 20 random sampling subject to *Belaire-West* opt out notice, and instead insisted that Defendant
 21 produce the names and contact information for the entire class, wrongly stating that Defendant
 22 had insisted "on attacking the representativeness of the sample." *Id.* at ¶ 8; Witte Decl., Exh. H.
 23 In that same correspondence, Plaintiffs stated they were willing to accept a sample of the time and
 24 payroll records for 20% of the putative class, provided Defendant disclose the names and contact
 25 information for the entire putative class. *Id.*

26 On October 15, 2013, during a telephonic meet and confer conference, Defendant's
 27 counsel proposed (subject to Claire's ultimate approval) a compromise in which Plaintiffs would
 28 receive contact information for a random sampling of approximately 217 individuals (20% of the

1 putative class) along with their corresponding time and payroll records, subject to a *Belaire-West*
 2 opt out notice procedure and subject to the parties' protective order. Meckley Decl., ¶ 9.
 3 Plaintiffs rejected this proposal and filed the current Motion approximately one month later on
 4 November 12, 2013. *Id.* at ¶ 10.

5 **III. ARGUMENT**

6 **A. Plaintiff is Not Entitled to the Identities and Contact and Personal**
 7 **Information for the Putative Class**

8 In the pre-certification discovery context, as here, "discovery is not intended as a fishing
 9 expedition permitting the speculative pleading of a case first and then action." *Thomas v.*
 10 *Cendant Mortgage*, 2005 WL 579903, at *3 (E.D. Penn. Mar. 11, 2005); *see also Samsung SDI*
 11 *Co., Ltd. v. Matsushita Electronic Industrial Co., Ltd.*, 2007 WL 432701, at *3 (C.D. Cal. June
 12 27, 2007) (the "requested information is not relevant to the pending action 'if the inquiry is based
 13 on the party's mere suspicion or speculation'"), *citing Micro Motion, Inc. v. Kane Steel Co., Inc.*,
 14 894 F.2d 1318, 1327 (Fed. Cir. 1990) ("The discovery rules are designed to assist a party to prove
 15 a claim it reasonably believes to be viable without discovery, not to find out if it has any basis for
 16 a claim. That the discovery might uncover evidence showing that a plaintiff has a legitimate
 17 claim does not justify the discovery request.") (emphasis added). In the class action context, a
 18 plaintiff should have some factual basis to support a belief that his/her individual claims are
 19 appropriate for class treatment before bringing a class action. A plaintiff cannot simply file an
 20 individual claim as a class action and then fish to see if anyone else might have a similar claim.

21 To prevent abuse of the class action procedure, the Ninth Circuit has held that pre-
 22 certification discovery on a class-wide basis is not permissible unless the plaintiff can show that a
 23 class action is maintainable or that the discovery is necessary to substantiate class allegations.
 24 *Mantolete*, 767 F.2d at 1424 ("Although in some cases a district court should allow discovery to
 25 aid the determination of whether a class action is maintainable, the plaintiff bears the burden of
 26 advancing a *prima facie* showing that the class action requirements of Fed.R.Civ.P. 23 are
 27 satisfied or that discovery is likely to produce substantiation of the class allegations."); *Doninger*
 28 *v. Pac. Northwest Bell, Inc.*, 564 F.2d 1304, 1313 (9th Cir. 1977) ("[W]here the plaintiffs fail to

1 make even a *prima facie* showing of [class action prerequisites], as we find here, the burden is on
 2 the plaintiff to demonstrate that discovery measures are likely to produce persuasive information
 3 substantiating the class action allegations"); *see also Zautinsky v. Univ. of Cal.*, 96 F.R.D. 622
 4 (N.D. Cal. 1983) (holding that plaintiff would not be permitted a general inquisition into
 5 defendant's files merely on the strength of having filed a putative class complaint; plaintiff would
 6 first have to demonstrate some ability to establish a *prima facie* case). That the *Mantolete*
 7 standard must be applied to prevent unwarranted classwide discovery has become even more
 8 clear since the Supreme Court's decision in *Wal-Mart Stores, Inc.*, 131 S. Ct. at 2551, in which
 9 the Supreme Court warned against class action treatment based on only a "competently crafted
 10 class complaint." *Id.* at 2551 citing Nagareda, Class Certification in the Age of Aggregate Proof,
 11 84 N.Y.U.L.Rev. 97, 131–132 (2009). As the Supreme Court explained, "The class action is 'an
 12 exception to the usual rule that litigation is conducted by and on behalf of the individual named
 13 parties only.'" *Id.* at 2550, *citing Califano v. Yamasaki*, 442 U.S. 682, 700-701 (1979). The
 14 *Mantolete* standard serves to impose an additional layer of inquiry before permitting expansive
 15 discovery that goes beyond the circumstances of the "individual named parties only" and to
 16 ensure that such expansive discovery be based on more than only a "competently crafted class
 17 complaint." *See id.* at 2550-2551.

18 This long-standing rule was underscored by Congress itself when it enacted the Class
 19 Action Fairness Act ("CAFA"), which is the basis for federal jurisdiction here. *See Order*
 20 *Denying Plaintiffs' Motion to Remand* (Dkt No. 36). Congress evinced its intent to limit pre-
 21 certification discovery of class member information, stating:

22 It would in most cases be improper for the named Plaintiff to request that
 23 defendant produce a list of all class members (or detailed information that would
 24 allow the construction of such a list), in many instances a massive, burdensome
 undertaking that will not be necessary unless a proposed class is certified.

25 Sen. Rep. No. 109-14, 1st Sess., p.44 (2005-2006) (emphasis added); *see also Rippee v.*
 26 *Boston Market Corp.*, 408 F. Supp. 2d 982 (S.D. Cal. 2005) (relying on CAFA's legislative
 27 history to deny plaintiff's requests for contact information of putative class members pre-
 28 certification).

1 District courts in California have consistently applied the *Mantolete* standard, requiring
2 that “the plaintiff bear[] the burden of advancing a *prima facie* showing that the class action
3 requirements … are satisfied or that discovery is likely to produce substantiation of the class
4 allegations” to deny or limit class-wide discovery in purported wage and hour class actions. *See*,
5 *e.g.*, *Clarke v. Insight Global, Inc.*, No. CV 13-00357-H-BLM, Dkt No. 39 at p. 2 (S.D. Cal. Sept.
6 13, 2013) (overruling plaintiff’s objection to a magistrate judge’s order limiting disclosure of
7 contact information to one office); *Maes v. JPMorgan Chase Bank*, 2013 WL 811839, *2 (S.D.
8 Cal. Mar. 5, 2013) (holding that plaintiffs did not meet their burden under *Mantolete* and
9 *Doninger* and refusing to order the disclosure of *any* contact information for putative class
10 members); *Taylor v. Waddell & Reed, Inc.*, 2012 WL 1463640, *2 (S.D. Cal. Apr. 27, 2012)
11 (same); *DeLodder v. Aertotek*, No. CV 08-6044 (C.D. Cal. Oct. 20, 2009 and Dec. 18, 2009)
12 (limiting plaintiff’s request for statewide disclosure of names and contact information to *a single*
13 *California office*); *Vasquez v. P.F. Chang’s China Bistro, Inc.*, No. CV 09-01408-DSF-RZx (C.D.
14 Cal. Oct. 8, 2009) (denying plaintiff’s request for statewide disclosure of identities and residences
15 of putative class members); *Williams v. Veolia Transportation Servs., Inc.*, 2008 WL 7389430
16 (C.D. Cal. Dec. 17, 2008) (denying plaintiff’s request for class-wide discovery); *Martinet v.*
17 *Spherion Atlantic Enterprises, Inc.*, 2008 U.S. Dist. LEXIS 48113 *6-7 (S.D. Cal. June 23, 2008)
18 (limiting the plaintiff’s discovery in a putative wage and hour class action to a limited time period
19 and to *the single office* where the plaintiff worked); *Krzesniak v. Cendant Corp.*, 2007 WL
20 756905 *1 (N.D. Cal. Mar. 8, 2007) (denying disclosure of names, addresses, and telephone
21 numbers of putative class members). The above-cited cases are directly applicable here and
22 provide this Court with a solid basis of precedent on which it may rely in order to deny Plaintiffs’
23 Motion.

1. Plaintiffs Have Not Established, And Cannot Establish, A *Prima Facie* Showing That They Can Maintain A Rule 23 Class Claim or that Class-Wide Discovery Will Substantiate Their Class Claims

Plaintiffs have not made a *prima facie* showing that they can meet the Rule 23 requirements for certification, nor have Plaintiffs made a *prima facie* showing that class discovery

1 could substantiate their class claims. Here, the overly broad, catch-all scope of Plaintiffs' 2 putative class definition forecloses the possibility of any such showing. Plaintiffs seek to 3 represent a class consisting of all persons employed by Defendants as Assistant Store Managers 4 and/or Store Managers in a California retail store during the relevant time period, regardless of 5 where the employee worked or who the employee's district manager was. Plaintiffs' class 6 definition lumps together employees who worked in different store locations and were subject to 7 the supervision of different district managers and who had different job duties/requirements. 8 Plaintiffs have made no showing that any common violation of law may exist among Defendant's 9 various store locations with respect to employee timekeeping, meal and rest periods, and expense 10 reimbursement practices or that any common policies facially violate applicable law. To the 11 extent that Plaintiffs themselves have individual wage and hour claims (which Defendant denies), 12 their lawsuit is *inherently individual*. The allegations in the Complaint demonstrate that their 13 claims are based on the isolated circumstances of their particular work experiences, and would 14 therefore require an individualized inquiry into the duties and responsibilities of each and every 15 Store Manager and Assistant Store Manager employed by Defendant in California during the 16 relevant time period.

17 For example, in the Complaint, Plaintiffs identify three situations where they claim they 18 were not paid for all time worked: (1) they claim that they were required to work "off-the-clock" 19 during their meal breaks because their stores were understaffed and they were unable to leave 20 because there was no other manager to cover their breaks; (2) they claim that they were required 21 to work "off-the-clock" after their shifts were scheduled to end in order to complete assigned 22 tasks; and (3) they claim they were required to take store funds to the bank after store hours while 23 "off-the-clock". *See* Complaint, ¶ 46. In these scenarios, the alleged violations stem from the 24 particular practices in the two stores in which Plaintiffs worked, and, even if true, would require 25 an individualized analysis as to whether the period of time of work allegedly performed off-the- 26 clock was *de minimis*.² Also, any alleged wage and hour violation that occurred would be the

27 ² Moreover, Plaintiffs cannot explain how the time and payroll records they seek could support 28 their alleged "off the clock" claims given that, by its very nature, "off the clock" work is not recorded and thus not reflected in time records or on paychecks.

1 result of Plaintiffs' own practices with respect to timekeeping and the work direction given by
 2 their specific manager. None of these purported scenarios involves any common policy that
 3 extended beyond Plaintiffs or their individual stores. For these reasons, it is clear that Plaintiffs
 4 have not established, and cannot establish, any *prima facie* basis for extrapolating their alleged
 5 individual experience to the more than 1,087 current and former employees from all over
 6 California whom they seek to represent. Plaintiffs have not made any *prima facie* showing
 7 which, under *Mantolete*, would justify the class-wide discovery sought in their Interrogatory No.
 8 1.

9 Plaintiffs' arguments in support of their Motion only serve to underscore the inherently
 10 individualized nature of their lawsuit. Plaintiffs argue that they should be provided with the
 11 names and contact information of almost 1,100 putative class members because these individuals
 12 may have information regarding "off-the-clock work which is, by its very nature time worked that
 13 is unrecorded." *See* Motion at 9:14-16. According to Plaintiffs, employers "must keep written
 14 records of meal periods, but are not required to record rest breaks." *Id.* at 9:16-17. In addition,
 15 Plaintiffs argue that putative class members may have information concerning whether they
 16 "complained about, for instance, the failure to receive a meal period even though meal periods
 17 were recorded" or whether a class member was "instructed by their manager to work off-the-
 18 clock or face certain consequences." *Id.* at 9, fn 2. Plaintiffs also argue that "allegations of 'off-
 19 the-clock' work and unreimbursed and undocumented business expenses cannot be supported
 20 solely through employees' time and payroll records." *Id.* at 9:19-21.

21 Each of these arguments reflects the fact that Plaintiffs want to embark on *an employee-
 22 by-employee, individualized fishing expedition*. If, as Plaintiffs contend, such individual
 23 experiences of the putative class members are determinative, and Plaintiffs must conduct scores
 24 of interviews from among approximately 1,087 putative class members in order to determine
 25 what these experiences actually are, then it is clear that individualized inquiries take precedence
 26 over common questions (such as those relating to Claire's policies and procedures). Plaintiffs'
 27 concession that they must perform individual interviews to support their "off-the-clock" claim
 28 highlights the fact that the central factual theory underlying all of their claims necessitates

1 numerous individualized inquiries.

2 Finally, whether and to what extent each putative class member incurred business-related
 3 expenses and whether such expenses were necessary and/or reasonable will depend on each
 4 member's individual circumstances, including the frequency with which they incurred any such
 5 expenses, and whether they submitted requests for reimbursement. That Plaintiffs intend to use
 6 the putative class list to interview putative class members regarding Defendant's expense-
 7 reimbursement policies and practices (see Motion at 9:19-21) once again makes clear that this is a
 8 case that requires each class member to describe his or her own situation. Rather than
 9 "substantiate" class action allegations, such individualized discovery demonstrates that class
 10 allegations cannot be substantiated.³

11 Class treatment requires that common questions and common answers must be present.
 12 See *Wal-Mart Stores, Inc.*, 131 S. Ct. at 2551. Case law confirms that a case in which each class
 13 member will need to describe his or her own experience and interactions with Defendant to
 14 determine each member's right to recover *cannot* proceed as a class action. See *In re Wells*
 15 *Fargo Home Mortgage Overtime Pay Litigation*, 571 F.3d 953 (9th Cir. 2009) (holding that class
 16 certification is inappropriate when a determination of liability would require "a fact-intensive
 17 inquiry into each potential plaintiff's employment situation"); *Vinole v. Countrywide Home*
 18 *Loans, Inc.*, 571 F.3d 935 (9th Cir. 2009), *reh'g denied*, Case No. 08-55223 (9th Cir. Aug. 18,

19 ³ Courts regularly deny certification of expense reimbursement claims for this very reason – i.e.,
 20 the question of whether reasonable and necessary expenses were incurred but not reimbursed is
 21 highly individualized. See, e.g., *In re AutoZone, Inc., Wage and Hour Employment Practices*
Litigation, 289 F.R.D. 526, 547 (N.D. Cal. 2012) (denying motion for class certification on
 22 expense reimbursement claim); *Ruiz v. Affinity Logistics Corp.*, 2009 WL 648973, *8 (S.D. Cal.
 23 Jan. 29, 2009) (finding mileage expense reimbursement claims inappropriate for class treatment
 24 because it would require a "case-by-case analysis where common questions do not predominate
 25 over individual questions"); *Ramirez v. Labor Ready, Inc.*, 2002 WL 1997037, *4 (Alameda Sup.
 26 Court, July 12, 2002) (claims for expenses not appropriate for class-wide treatment because too
 27 many individualized inquiries required to determine the existence and extent of necessary
 28 expenses incurred by each putative class member); *Desimone v. Allstate Ins. Co.*, 1999 WL
 33226248, *7 (N.D. Cal. 1999) (to demonstrate a violation of section 2802, plaintiffs "must
 introduce specific evidence of actual and necessary expenditures," that they incurred necessary
 expenses in the discharge of their duties, and that the employer failed to reimburse for such
 expenses); *Grissom v. Vons Cos., Inc.*, 1 Cal.App.4th 52, 58 (1991) ("Necessity is by nature a
 question of fact...accordingly, ascertaining what was a necessary expenditure will require an
 inquiry into what was reasonable under the circumstances."); *see also re RBC Dain Rauscher*
Overtime Litigation, 703 F.Supp.2d 910, 969 (D. Minn. 2010) (the reasonableness of an
 employee's alleged expenses is fact-intensive, and not suitable for class treatment).

1 2009) (holding that where a plaintiff is unable to show the existence of “company-wide policies
 2 governing how employees spend their time,” class treatment under Rule 23 is not appropriate
 3 given the need to hold “mini-trials” with respect to the work performed by each and every class
 4 member). “[A] class action cannot be maintained where each member’s right to recover depends
 5 on facts peculiar to his case” *Brown v. Federal Express Corp.*, 249 F.R.D. 580, 586-87
 6 (C.D. Cal. 2008) (denying class certification in meal and rest break class action where highly
 7 individualized factual inquiries predominated over common class concerns). Plaintiffs seek
 8 sweeping classwide discovery without even attempting to make the *prima facie* showing that can
 9 meet the Rule 23 standards as required by the Ninth Circuit. Accordingly, Plaintiffs are not
 10 entitled to the wholesale contact and personal information they seek.

11 The cases cited by Plaintiffs further demonstrate why their Motion to Compel should be
 12 denied. Instead of addressing the *Mantolete/Doninger* requirements, the cases on which Plaintiffs
 13 rely are distinguishable and not applicable here because they are either (1) California state court
 14 opinions that do not apply the pre-certification discovery standard set forth by the Ninth Circuit in
 15 *Mantolete* and *Doninger*, or (2) federal cases that do not consider or even mention *Mantolete* or
 16 *Doninger*.⁴ In contrast, the cases relied upon by Defendant herein all correctly apply Ninth
 17 Circuit precedent and are directly on point.⁵

18 Simply put, Plaintiffs have not met their burden to obtain information about each of the

19 ⁴ *Lauderdale v. Fed. Express Corp.*, No. 2:11-cv-00902-DSF-PJW (C.D. Cal. Aug. 24, 2011);
 20 *Murphy v. Target Corp.*, 2011 U.S. Dist. LEXIS 62458 (S.D. Cal. June 14, 2011); *York v.*
 21 *Starbucks Corp.*, 2009 WL 3177605, *2 (C.D. Cal. Jun. 30, 2009); *Hill v. Eddie Bauer*, 242
 22 F.R.D. 556 (C.D. Cal. 2007); *Ho v. Ernst & Young, LLP*, 2007 WL 1394007, *2 (N.D. Cal. May
 9, 2007); *Jimenez v. Domino's Pizza, LLC*, 2006 U.S. Dist. LEXIS 66510 (C.D. Cal. 2006);
 23 *Tierno v. Rite Aid Corp.*, 2006 U.S. Dist. LEXIS 71795 (N.D. Cal. 2006) (did not involve pre-
 24 certification discovery because a class had already been certified); *Wiegele v. FedEx Ground*
 25 *Package Sys.*, 2006 U.S. Dist. LEXIS 90359 (S.D. Cal. 2006); *Sanbrook v. Office Depot*, 2009
 26 U.S. Dist. LEXIS 30852 (N.D. Cal. 2009); *Armstrong v. Davis*, 275 F.3d 849, 872 n.28 (9th Cir.
 27 2001) (did not involve the discovery of putative class information); *Babbitt v. Albertson's, Inc.*,
 28 1992 U.S. Dist. LEXIS 19091 (N.D. Cal. 1992); *Kamm v. Cal. City Development Co.*, 509 F.2d
 205 (9th Cir. 1975) (decided before *Mantolete* and *Doninger* and did not involve the discovery of
 putative class information); *Stewart v. Winter*, 669 F.2d 328, 331 (5th Cir. 1982).

⁵ The one case cited by Plaintiff that does consider *Mantolete* is distinguishable because the court
 determined that the plaintiffs *had* made a *prima facie* showing because the court had already
 certified the proposed class in a companion case that involved the same policies and practices
 applicable in *Kress*. See *Kress v. Price Waterhouse Coopers*, 2011 U.S. Dist. LEXIS 87845, *8
 (E.D. Cal. Aug. 9, 2011).

1 more than 1,087 individual Store Managers and Assistant Store Managers who worked for
 2 Claire's in its California retail stores. Claire's has already produced various policy and procedure
 3 documents. Plaintiffs have also noticed the Rule 30(b)(6) deposition of Defendant. Plaintiffs
 4 have no entitlement, under federal law, to obtain a "class list" just because they have filed a class
 5 action. For all of these reasons, Plaintiffs have not made the requisite *prima facie* showing to
 6 justify production of the identities and contact information for the more than 1,087 store
 7 employees encompassed within their class definition, and for that reason their Motion should be
 8 denied.

9 **2. Plaintiffs' Interrogatory Seeks Information Protected By The Right To
 10 Privacy**

11 Defendant's current and former employees have a legitimate expectation of privacy in
 12 their identity, residential contact information, and work history. For example, "[c]ourts have
 13 frequently recognized that individuals have a substantial interest in the privacy of their home." *Planned Parenthood Golden Gate v. Superior Court*, 83 Cal.App.4th 347, 359 (2000); *Puerto v. Superior Court*, 158 Cal.App.4th 1242, 1252 (2008) (holding that current and former employees
 16 unquestionably have a legitimate expectation of privacy in their addresses and telephone
 17 numbers); *see also Hill v. Colorado*, 530 U.S. 703, 716 (2000). Similarly, California Code of
 18 Civil Procedure section 1985.6 requires that notice be given to employees whose employment
 19 records are subpoenaed so that they have an opportunity to consent or object. According to the
 20 legislative history of this statute, employees maintain a "legitimate expectation of privacy" in
 21 their "personal records." Hearing before Assembly Com. on Judiciary on Bill No. AB 617
 22 (1995); *see also Prentice v. Fund for Public Interest Research, Inc.*, 2007 U.S. Dist. LEXIS
 23 71122, *9 (N.D. Cal. Sept. 18, 2007) (holding that the Fund "did nothing wrong and should not
 24 be penalized" for withholding contact information of putative class members in response to an
 25 informal request because it would have risked violating California privacy laws had it complied
 26 with the plaintiffs' request). Compelled discovery within the realm of the right of privacy
 27 "cannot be justified solely on the ground that it may lead to relevant information." *Britt v. Superior Court*, 20 Cal.3d 844, 856 (1978). "Even when discovery of private information is

1 found directly relevant to the issues of ongoing litigation, it will not be automatically allowed;
 2 there must then be a 'careful balancing' of the 'compelling public need' for discovery against the
 3 'fundamental right of privacy.'" *Id.*

4 Claire's employees communicated their residential contact information to Defendant on
 5 confidential employment applications, benefits forms, and/or tax documents. The confidential
 6 nature of this information requires that Defendant maintain its privacy and use it only for
 7 employment and tax purposes. Plaintiffs have failed to demonstrate the possible relevancy, let
 8 alone a compelling public need, for disclosure of the addresses and telephone numbers of 1,087
 9 current and former employees. The right to privacy here outweighs any speculative relevance
 10 that Plaintiffs have asserted.⁶

11 In addition, current and former employees have a legitimate expectation of privacy in
 12 their telephone contact information. In this day and age, many people, including Defendant's
 13 employees, have mobile phone numbers, which are private. Indeed, some courts have held that
 14 telephone numbers are too personal to be disclosed at all. *See, e.g., Clarke v. Insight Global,*
 15 *Inc.*, No. CV 13-00357-H-BLM, Dkt No. 39 at p. 2 (S.D. Cal. Sept. 13, 2013) (overruling
 16 plaintiff's objection to a magistrate judge's order limiting disclosure of contact information to
 17 one office and denying disclosure of putative class members' telephone numbers); *Rix v.*
 18 *Lockheed Martin Corp.*, No. 09-cv-2063 MMA (NLS), Dkt No. 29 at pp. 4-5 (S.D. Cal. Jan. 4,
 19 2012) (denying disclosure of putative class members' telephone numbers: "Plaintiff has not
 20 provided any authority for his position that he has a constitutional right to the telephone numbers
 21 of putative class members, where other contact information is found to be discoverable");
 22 *Tomassi v. City of Los Angeles* 2008 WL 4722393, *4 and n.1 (C.D. Cal. Oct. 24, 2008) (denying
 23 motion to compel telephone numbers or alternate contact information such as e-mail addresses
 24 based on privacy concerns). In the event the Court allows disclosure of any contact information,
 25 the Court should limit such discovery to a limited sampling of names and addresses *only*.

26
 27
 28

⁶ Plaintiffs' reliance on *Belaire-West Landscape, Inc. v. Superior Court*, 149 Cal. App. 4th 554, 561 (2007), *Crab Addison, Inc. v. Superior Court*, 169 Cal. App. 4th 958 (2008), and *Puerto v. Superior Court*, 158 Cal. App. 4th 1242 (2008), for the proposition that an opt-out notice procedure ameliorates any privacy concerns is inapposite, because all of these are state court decisions and this matter is in federal court.

1 **B. Plaintiffs Are Not Entitled to the Time or Payroll Records of the Entire**
 2 **Putative Class**

3 Plaintiffs seek the following time and payroll records:

4 Request for Production No. 10: “All DOCUMENTS reflecting the time, means of
 5 transmission and amount of the payment of wages to each COVERED EMPLOYEE
 6 during the RELEVANT TIME PERIOD, during his or her employment with
 7 DEFENDANT.”

8 Request for Production No. 12: “All time sheets, W-2 statements, WAGE STATEMENT,
 9 wage records and/or payroll records for each COVERED EMPLOYEE during the
 10 RELEVANT TIME PERIOD, in Microsoft Excel readable and searchable format.”

11 Request for Production No. 14: “DOCUMENTS sufficient to identify every type of
 12 remuneration that could have been earned by COVERED EMPLOYEES during the
 13 RELEVANT TIME PERIOD, including, but not limited to, straight time, OVERTIME,
 14 double time, shift premiums, commissions, and any non-discretionary bonuses.”

15 Request for Production No. 16: “All computerized and machine readable databases,
 16 reports, and other DOCUMENTS containing time records for all COVERED
 17 EMPLOYEES for the RELEVANT TIME PERIOD.”

18 Request for Production No. 17: “All clock-in and clock-out times for COVERED
 19 EMPLOYEES during the RELEVANT TIME PERIOD.”

20 **1. Plaintiffs Have Not Shown that the Requested Discovery Is Relevant
 21 and/or Necessary for Their Class Claims**

22 Plaintiffs have failed to present any evidence that the time and payroll records are relevant
 23 or reasonably calculated to lead to the discovery of admissible evidence. Plaintiffs cannot
 24 identify any inconsistency between their recorded hours of work and their wages; indeed,
 25 Plaintiffs’ claims are based on an “off-the-clock” work theory. Plaintiffs claim only that they
 26 were not paid for all time **worked**, and not that they were not paid for all time that was **recorded**
 27 ***in their time records.*** See Complaint. Accordingly, records showing the times that putative class
 28 members recorded by clocking in and out does nothing to substantiate supposed class “off the
 29 clock” claims. Claire’s has already produced extensive documents, including the entire contents
 30 of Plaintiffs’ personnel files, their time records, their payroll records, non-privileged documents
 31 reflecting complaints made by Plaintiffs regarding any paycheck errors or expense reimbursement
 32 requests, and job descriptions for the District Manager, Store Manager, and Assistant Store

1 Manager positions during the relevant time period. Claire's has also produced all applicable
 2 policy and procedure documents. Plaintiffs have not even attempted to demonstrate how or why
 3 their own records reflect any violation – there is thus no basis for assuming any additional
 4 production will be relevant to demonstrating a class-wide violation.

5 The payroll records of putative class members are not necessary in pre-certification
 6 discovery for the same reasons as the requested time records are not necessary, as the payroll
 7 records do nothing to substantiate Plaintiffs' claims that they were denied wages that they
 8 earned. At most, Plaintiffs have argued that payroll records will show whether premiums and
 9 overtime were paid at the proper regular rate. (Motion at 20:22-24). Plaintiffs have not,
 10 however, identified a *single example* from their own records that supports their theory that the
 11 regular rate was not calculated properly. Absent any such example, Plaintiffs have no standing
 12 to prosecute any such alleged claim. Nor do Plaintiffs explain (because they cannot) how such
 13 payroll records will show whether or not an employee was provided with a meal or rest break,
 14 whether or not a meal or rest break was actually taken or was waived by the employee, whether
 15 or not an employee was entitled to reimbursement for business expenses, or whether or not all
 16 wages were paid during employment and at termination. *See, e.g., Brinker Restaurant Corp. v.*
 17 *Superior Court*, 53 Cal.4th 1004 (2012) (“class certification motion is not a license for a free-
 18 floating inquiry into the validity of the complaint’s allegations; rather, resolution of disputes
 19 over the merits of a case generally must be postponed until after class certification has been
 20 decided[.]”).

21 Indeed, Plaintiffs concede in their Motion that “off-the-clock work which is, by its very
 22 nature time worked that is unrecorded” would not be proven by the time and payroll records.
 23 (Motion at 9:14-16). Plaintiffs further concede that “employers must keep written records of
 24 meal periods, but are not required to record rest breaks . . . the same analysis [of time records]
 25 is incapable of supporting Plaintiffs’ off-the-clock and rest period claims.” (Motion at 9:17-19).
 26 Plaintiffs also admit that “by their very nature, allegations of ‘off-the-clock’ work and
 27 unreimbursed and undocumented business expenses cannot be supported solely through
 28 employees’ time and payroll records.” (Motion at 9:19-21). Given these admissions, Plaintiffs’

1 attempt to acquire putative class members' time and payroll records is improper and an abuse of
 2 the discovery process. As such, Plaintiffs' Motion should be denied with respect to Requests
 3 Nos. 10, 12, 14, 16, and 17.

4 **2. Discovery Beyond Plaintiffs' Individual Claims Is Unduly Burdensome
 5 and Harassing Where Plaintiffs Have Made No Showing of Class-Wide
 6 Wrongdoing**

7 Claire's properly objected to the Requests on the basis of being overly broad and unduly
 8 burdensome. Plaintiffs are not entitled to class-wide discovery or discovery as to an expansive
 9 portion of the putative class, where they have not made the requisite showing under *Mantolete*.
 10 Applicable case law confirms that Plaintiffs must justify such a far-reaching, incredibly
 11 burdensome discovery by making a *prima facie* showing that the requirements for class
 12 certification may be met. *Mantolete*, 767 F.2d at 1424; *Vasquez v. P.F. Chang's China Bistro, Inc.*, No. CV 09-01408-DSF-RZx, Dkt. No. 23 (C.D. Cal. Oct. 8, 2009) (applying *Mantolete* and *Doninger* to deny requests for timekeeping records and payroll data for the putative class).

13 Plaintiffs generically argue that the requested records tend "to establish that certain of
 14 Defendant's practices were implemented on a company-wide basis, in connection with but [sic]
 15 possibly not following overtime policy, wage statement policy, meal break policy, rest break
 16 policy, and separation payment policy." (Motion at 17:1-3). If, as Plaintiffs argue, they must
 17 be allowed to analyze individual putative class members' time and wage records on a case-by-
 18 case basis in order to determine whether a violation took place, then this only reinforces the fact
 19 that individual questions will predominate over common questions. Consequently, Plaintiffs'
 20 need for individual time and wage records highlights the fact that they cannot make a *prima
 21 facie* showing of the requirements of class certification.

22 The cases Plaintiffs cite are distinguishable because they do not consider or even
 23 mention *Mantolete* or *Doninger*. See, e.g., *Hill v. Eddie Bauer*, 242 F.R.D. 556, 562 (C.D. Cal.
 24 2007); *Chavez v. Petriessans*, 2008 WL 4177797, *5 (E.D. Cal. Sept. 5, 2008); *Wynne v.
 25 McCormick & Schmicks Seafood Restaurants, Inc.*, 2006 WL 3422226, *1 (N.D. Cal. Nov. 28,
 26 2006). Moreover, *Chavez* involved a total class size of only 57 putative class members, which
 27 is far less than the more than 1,087 class members here. See *Chavez*, 2008 WL 4177797, *5.

1 In addition, *Wynne* is inapplicable here because it involved an employment discrimination class
 2 action where the plaintiffs sought statistical evidence about the putative class in order to
 3 support their claims of class wide discrimination. *See Wynne*, 2006 WL 3422226, *1.

4 Even if Plaintiffs could meet their burden to obtain the class discovery they seek, the
 5 compelled production of certain of the records Plaintiffs' seek would be unduly burdensome on
 6 Claire's, and that burden outweighs any marginal benefit of the records. Where the burden or
 7 expense of the proposed discovery outweighs its likely benefit, courts may bar such discovery.
 8 Fed. R. Civ. P. 26(b)(2)(iii). When the request violates this proportionality test, courts may
 9 condition discovery on the requesting party's payment of costs for that discovery. *See* Fed. R.
 10 Civ. P. 26(b)(2),(c); *Boeynaems v. LA Fitness International, LLC*, 285 F.R.D. 331, 342-43 (E.D.
 11 Pa. 2012) (shifting cost of class-certification discovery to plaintiffs). Such cost-shifting also
 12 includes the cost to *review* data. *See Adair v. EQT Production Co.*, 2012 WL 1965880 (W.D. Va.
 13 May 31, 2012).

14 Here, Plaintiffs' Requests identify incredibly overbroad, burdensome and unmanageable
 15 categories of documents, such as "all documents reflecting the time, means of transmission and
 16 amount of the payment of wages," "all time sheets, W-2 statements, wage statements," and
 17 "documents sufficient to identify every type of remuneration that could have been earned by
 18 covered employees" for almost 1,100 employees. Although during the meet and confer process
 19 Plaintiffs described the scope of what they wanted as an Excel database containing the time
 20 records and payroll records for the putative class, Plaintiffs' Motion contains no such limitation,
 21 and the Requests as written seek far more than what Plaintiffs' described during the meet and
 22 confer. Because these documents have no utility in showing that Plaintiffs' claims are suitable
 23 for class treatment, the incredible burdens associated with producing them far outweigh any
 24 possible bases for ordering production.

25 **3. Third-Party Employees Are Protected by the Right to Privacy**

26 The time records and wage records of third-party putative class members, including the
 27 requested W-2 statements (which clearly constitute confidential tax records), are also protected
 28 from disclosure by the individual right to privacy. *See Board of Trustees v. Superior Ct.*, 119

1 Cal. App. 3d 516, 524-27 (1981). Employee personnel information, such as time and wage
 2 records is unquestionably protected by California's right to privacy. *See, e.g., Harding Lawson*
 3 *Assoc. v. Superior Ct.*, 10 Cal. App. 4th 7, 10 (1992); *Board of Trustees*, 119 Cal. App. 3d at
 4 524-27; *El Dorado Savings & Loan Ass'n v. Superior Ct.*, 190 Cal. App. 3d 342, 345-46
 5 (1987); *Teamsters Local 856 v. Priceless, LLC*, 112 Cal. App. 4th 1500, 1515 (2003). In
 6 particular, Plaintiffs are not entitled to the payroll records of the putative class members given
 7 the highly confidential and sensitive nature of these records. *See Coleman v. Jenny Craig, Inc.*,
 8 2013 WL 2896884, at *11, (slip op) (S.D. Cal. June 12, 2013) (request for putative class
 9 member payroll records denied "because such documents contain more confidential and
 10 sensitive information than simply time records or contact information" and "the privacy
 11 interests weigh against providing this information.") citing *Nguyen v. Baxter Healthcare Corp.*,
 12 275 F.R.D. 503, 512-13 (C.D. Cal. 2011). Thus, given the strong privacy protection provided
 13 personnel information, there can be no doubt that the Constitution affords the putative class
 14 members an expectation that their personnel information, such as time and wage records, will
 15 be protected from disclosure.

16 Abridgement of the right to privacy should be rare and permitted only upon a showing
 17 of direct relevance and a compelling need:

18 [I]t has been adjudged that inquiry into one's private affairs will not be
 19 constitutionally justified simply because inadmissible, and irrelevant, matter
 20 sought to be discovered might lead to other, relevant, evidence. "When
 21 compelled disclosure intrudes on constitutionally protected areas, it cannot be
 22 justified solely on the grounds that it may lead to relevant information." "And
 23 even when discovery of private information is found directly relevant to the
 24 issues of ongoing litigation, it will not be automatically allowed; there must then
 25 be a 'careful balancing' of the 'compelling public need' for discovery against the
 26 fundamental right of privacy."

27 *Binder v. Superior Ct.*, 196 Cal. App. 3d 893, 900 (1987) (quoting *Board of Trustees*, 196 Cal.
 28 App. 3d at 525-26); *see also Britt v. Superior Ct.*, 20 Cal. 3d 844, 855-56, 859-62 (1978). In
 addition, even when the plaintiff can meet the rigorous standard of demonstrating direct
 relevance and a compelling state interest, the order must be narrowly tailored to serve the
 compelling state interest. *Binder*, 196 Cal. App. 3d at 900.

1 Here, Defendants have already produced the individual Plaintiffs' time and payroll
 2 records. It is axiomatic that the time and wage records of these third-party putative class
 3 members are protected by California's right to privacy. Plaintiffs have demonstrated neither
 4 direct relevance nor a compelling state interest in production of this information. Employees do
 5 not assent to disclosure of their confidential wage and time information to third parties simply
 6 because another employee decides to bring a wage and hour putative class action. As a result,
 7 Plaintiffs have failed to meet their burden that third-party time and wage records are directly
 8 relevant and serve a compelling interest to overcome the individual right to privacy, and thus
 9 Plaintiffs' Motion should be denied.

10 C. To The Extent The Court Does Not Deny Plaintiffs' Motion In Its Entirety,
 11 The Court Should Limit The Disclosure to a 20% Random Sampling That Is
Subject To A Belaire-West Opt Out Notice Procedure

12 Even in situations when district courts may be inclined to allow *some* disclosure of contact
 13 information, courts typically impose significant limitations on pre-certification discovery, such as
 14 limiting disclosure of contact information for only the location at which the plaintiff worked or
 15 for only a small sample of the putative class. *See, e.g., McCullough v. Office Depot, Inc.*, No. CV
 16 10-04987-GHK (JEMx) (C.D. Cal. June 30, 2011) (limiting disclosure of contact information to
 17 the location in which plaintiff worked); *Nguyen v. Baxter Healthcare Corp.*, 275 F.R.D. 503, 508
 18 (C.D. Cal. June 6, 2011) (limiting disclosure of information to the location in which plaintiff
 19 worked); *Bullen v. Citigroup Global Markets*, No. C-09-04117-SBA (EDL) (N.D. Cal. June 3,
 20 2010) (limiting disclosure of putative class contact information to the region in which the name
 21 plaintiff worked); *Kaminske v. JPMorgan Chase Bank*, 2010 U.S. Dist. LEXIS 141514, at *16
 22 (C.D. Cal. May 21, 2010) (citing *Mantolete* to limit the production to a "random sample of *ten*
 23 *percent* of the putative class members") (emphasis added); *Currie-White v. Blockbuster, Inc.*,
 24 2010 U.S. Dist. LEXIS 47071, at *9-*11 (N.D. Cal. Apr. 15, 2010) (limiting disclosure of
 25 putative class member contact information to individuals to worked at approximately *2.5% of the*
 26 *retail stores at issue*); *DeLodder*, No. CV 08-6044-CAS (AGRx) (C.D. Cal. Oct. 20, 2009 and
 27 Dec. 18, 2009) (citing *Mantolete* and limiting request for statewide disclosures of names and
 28 contact information to *one California office*); *Franco v. Bank of Amer.*, 2009 U.S. Dist LEXIS

1 111873, at *12 (S.D. Cal. Dec. 1, 2009) (citing *Mantolete* and limiting disclosure of putative class
 2 contact information to only the employees who worked in the same branch offices as the named
 3 plaintiff); *Martinet*, 2008 U.S. Dist. LEXIS 48113 at *6-7 (limiting plaintiff's discovery in
 4 putative wage and hour class action to a limited time period and to the office where named
 5 plaintiff worked); *Chu v. Wells Fargo Invest., LLC*, No. C 05-4526 (N.D. Cal. Apr. 16, 2008)
 6 (limiting disclosure of putative class member information to only those individuals plaintiff had
 7 already identified); *Keene v. Coldwater Creek, Inc.*, No. C 07-05324, *2 (N.D. Cal. Feb 28, 2008)
 8 (ordering the disclosure of identities and contact information for *a mere 0.6% of putative class*,
 9 reasoning that providing a small portion of names and addresses to plaintiffs "balances the need
 10 for individual employee information against the burden and privacy concerns."); *Acevedo v. Ace*
 11 *Coffee Bar, Inc.*, 248 F.R.D. 550, 556 (N.D. Ill. 2008) (limiting discovery to facility at which
 12 plaintiff worked); *Tracy v. Dean Witter Reynolds, Inc.*, 185 F.R.D. 303, 311-13 (D. Colo. 1998)
 13 (same).⁷

14 Plaintiffs' originally proposed a sampling during the parties' meet and confer, but then
 15 inexplicably changed their mind and rejected such approach. If the Court allows any
 16 production/disclosure, it should be limited to a 20% random sampling of the putative class names
 17 and addresses and a 20% random sampling of anonymous time records (but not payroll records)
 18 with personal identifying information redacted and containing only unique identifiers. In
 19 addition, should the Court order the production of any contact information or non-anonymous
 20 time or payroll records, such production should be subject to the specific opt-out notification
 21 procedure established by the California Supreme Court to address the privacy expectations of the
 22 putative class members. *See Pioneer Electronics (USA), Inc. v. Superior Court*, 40 Cal.4th 360,
 23 373 (2007); *Belaire-West Landscape, Inc. v. Superior Court*, 149 Cal.App.4th 554 (2007).

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 25 ⁷ This Court has ordered sampling in other cases. In *Perez v. State Farm Mutual Automobile Ins.*
 26 *Co.*, Case No. C-06-01962 JW (PSG), Dkt No. 373 (N.D. Cal. June 16, 2011), this Court ordered
 27 the production of a sampling of class discovery, stating that sampling advanced the goal of
 28 proportionality set forth in Fed. R. Civ. P. 26(b)(3)(c)(iii)). Also, in *Feske v. MHC Thousand*
Trails Limited Partnership, et al., Case No. 11-CV-4124-PSG, Dkt No. 51 (N.D. Cal. April 3,
 2012), the plaintiffs had proposed a randomized sample of the contact information for 2,000 out
 of 100,000 plus putative class members. This Court ordered production of a sampling of the
 contact information of putative class members, but did not rule on the sample size, leaving it to
 the parties' mutual agreement. *Id.*

1 Specifically, before any contact information, time or payroll records are released to Plaintiffs'
 2 counsel, each putative class member should receive notice of the pending disclosure, and be
 3 allowed an opportunity to opt out of the disclosure of (1) their contact information, or, separately,
 4 (2) their time or payroll records.

5 **IV. CONCLUSION**

6 Claire's properly objected to Plaintiffs' Interrogatory No. 1 and Requests Nos. 10, 12, 14,
 7 16, and 17. Plaintiffs have not demonstrated a compelling need for individualized discovery of
 8 Claire's current and former employees' private and confidential employment records. Given
 9 Claire's production to date, Plaintiffs have access to more than sufficient information to conduct
 10 their investigation into whether they can satisfy the prerequisites for a class action; there is no
 11 simply basis at this pre-certification stage of the litigation to impose such burden on Claire's or
 12 trample the privacy rights of its current and former employees. For these reasons, the Court
 13 should deny Plaintiffs' Motion in its entirety. Alternatively, the Court should limit the disclosure
 14 to a random sample of the names and addresses for 20% or less of the putative class, subject to an
 15 opt-out procedure.

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17 Dated: November 26, 2013

MORGAN LEWIS & BOCKIUS, LLP

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By: /s/ Eric Meckley

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Eric Meckley
 Attorneys for Defendant
 CLAIRE'S BOUTIQUES, INC.

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